IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4370 OF 2004

Babu Goyappa Jalagiri ..Applicant

versus

The State of Maharashtra ..Respondents

Mr. S. Ingawle with S.J. Patil for the Applicant.
Mr. K. V. Saste A.P.P. for the Respondents.

CORAM : A.M. KHANWILKAR,J.

DATE : 20TH OCTOBER 2004.

P.C. :

1. Heard counsel for the parties. Perused the record. The court below, to my mind, has committed manifest error in assuming that provisions of sub sections 3 and 4 of Section 438 are independent. Sub Sections of Section 438 as applicable to the State of Maharashtra will have to be read conjointly and if so read the scheme appears to be that when the court insist for appearance of any applicant before the application is finally heard or at any other stage of the hearing of the application, the appropriate course would be to protect the applicant for the limited purpose so as to enable him to appear before the court. If such limited protection is not extended to the applicant, the applicant

would be obviously exposed to the threat of arrest and for which purpose Section 438 has been brought into force. Viewed in this perspective, the Sessions Judge, Sangli, has committed manifest error in proceeding on the assumption that it was not necessary to extend any protection to the applicant so as to enable him to appear before the court. As the court below has not considered any other aspects on merits, to my mind, following order will meet the ends of justice:

(a) The applicant is protected for a period of one week from today to enable him to make fresh application before the Sessions Court at Sangli, who in turn shall decide the same on its own merits in accordance with the law.

(b) That the applicant will not be arrested by the police in connection with the offence registered as C.R. No. 6 of 2004 in Umadi Police Station, Sangli. That will not preclude the Investigating Officer to ask the applicant to attend the police station for the purpose of interrogation till the Anticipatory Bail Application is disposed of.

Application disposed of accordingly.

A.M. KHANWILKAR, J.